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(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
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Short Title: Revenue Laws Technical Changes - Part II.

(Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED
AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE
CHANGES TO THE TAX LAWS.

The General Assembly of North Carolina enacts:

REFORM TAX APPEALS CHANGES

SECTION 1.(a) G.S. 105-241.11(a) reads as rewritten:

"(a) Procedure. – A taxpayer who objects to a proposed denial of a refund or a proposed assessment of tax may request a Departmental review of the proposed action by filing a request for review. The request must be filed with the Department as follows:

- (1) Within 45 days of the date the notice of the proposed denial of the refund or proposed assessment was mailed to the taxpayer, if the notice was delivered by mail.
- (2) Within 45 days of the date the notice of the proposed denial of the refund or proposed assessment was delivered to the taxpayer, if the notice was delivered in person.
- (3) At any time after between the date that inaction by the Department on a request for refund is considered a proposed denial of the refund and the date the time periods set in the other subdivisions of this subsection expire."

SECTION 1.(b) G.S. 105-449.52(b) reads as rewritten:

"(b) Review. – The procedure set out in G.S. 105-449.119 for reviewing a penalty imposed under Article 36C, Part 6, of this Chapter applies to a penalty imposed under this section."

SECTION 1.(c) G.S. 150B-31.1(d) reads as rewritten:

"(d) Reports. –The following agency reports are admissible without testimony from personnel of the agency:

- (1) Law enforcement reports.

- (2) Government agency lab reports used for the enforcement of motor fuel tax laws."

COLLECTION CHANGES

SECTION 2.(a) G.S. 105-253 is recodified as G.S. 105-242.2 and reads as rewritten:

"§ 105-242.2. Personal liability when certain taxes not paid.

(a) Definitions. – The following definitions apply in this section:

- (1) Business entity. – A corporation, a limited liability company, or a partnership.
- (2) Responsible person. – Any of the following:
 - a. The president, treasurer, or chief financial officer of a corporation.
 - b. A manager of a limited liability company or a partnership.
 - c. An officer of a corporation, a member of a limited liability company, or a partner in a partnership who has a duty to deduct, account for, or pay taxes listed in subsection (b) of this section.
 - d. A partner who is liable for the debts and obligations of a partnership under G.S. 59-45 or G.S. 59-403.

(b) Responsible Person. – Each responsible person in a business entity is personally and individually liable for all of the taxes listed in this subsection. If a business entity does not pay a tax it owes after the tax becomes collectible under G.S. 105-241.22, the Secretary may enforce the responsible person's liability for the tax by sending the responsible person a notice of proposed assessment in accordance with G.S. 105-241.9. The taxes for which a responsible person may be held personally and individually liable are:

- (1) All sales and use taxes collected by the business entity upon its taxable transactions.
- (2) All sales and use taxes due upon taxable transactions of the business entity but upon which it failed to collect the tax, but only if the person knew, or in the exercise of reasonable care should have known, that the tax was not being collected.
- (3) All taxes due from the business entity pursuant to the provisions of Articles 36C and 36D of Subchapter V of this Chapter and all taxes payable under those Articles by it to a supplier for remittance to this State or another state.
- (4) All income taxes required to be withheld from the wages of employees of the business entity.

(c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1007, s. 15.

(d) Distributions. – An officer, partner, trustee, or receiver of a business entity required to file a report with the Secretary who has custody of funds of the entity and who allows the funds to be paid out or distributed to the owners of the entity without having remitted to the Secretary any State taxes that are due is personally liable for the payment of the tax. The Secretary may enforce an individual's liability under this

1 subsection by sending the individual a notice of proposed assessment in accordance
2 with G.S. 105-241.9.

3 (e) Statute of Limitations. – The period of limitations for assessing a responsible
4 person for unpaid taxes under this section expires one year after the expiration of the
5 period of limitations for assessing the business entity."

6 **SECTION 2.(b)** This section becomes effective July 1, 2008, and applies to
7 taxes that become collectible on or after that date.

8 **SALES TAX CHANGES**

9 **SECTION 3.** G.S. 105-164.16 is amended by adding a new subsection to
10 read:

11 "(e) Simultaneous State and Local Changes. – When State and local sales and use
12 tax rates change on the same date because one increases and the other decreases but the
13 combined general rate does not change, sales and use taxes payable on the gross receipts
14 from the following periodic payments are reportable in accordance with the changed
15 State and local rates:

16 (1) Lease or rental payments billed after the effective date of the changes.

17 (2) Installment sale payments received after the effective date of the
18 changes by a taxpayer who reports the installment sale on a cash
19 basis."

20 **OCCUPANCY TAX CHANGES**

21 **SECTION 4.(a)** Article 9 of Chapter 105 is amended by adding a new
22 section to read:

23 **"§ 105-264.1. Secretary's interpretation applies to local taxes that are based on**
24 **State taxes.**

25 An interpretation by the Secretary of a law administered by the Secretary applies to a
26 local law administered by a unit of local government when the local law refers to the
27 State law to determine the application of the local law. A person who is subject to the
28 local law or the unit of local government that administers the local law may ask the
29 Secretary for an interpretation of the State law that determines the application of the
30 local law. An interpretation by the Secretary of a State law that determines the
31 application of a local law provides the same protections against liability under the local
32 law that it provides under the State law."

33 **SECTION 4.(b)** G.S. 153A-155(c) reads as rewritten:

34 "(c) Collection. – Every operator of a business subject to a room occupancy tax
35 shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall
36 be collected as part of the charge for furnishing a taxable accommodation. If a taxable
37 accommodation is furnished as part of a package, the bundled transaction provisions in
38 G.S. 105-164.4D apply in determining the sales price of the taxable accommodation. If
39 those provisions do not address the type of package offered, the operator may determine
40 an allocated price for each item in the package based on a reasonable allocation of
41 revenue that is supported by the operator's business records kept in the ordinary course
42 of business and collect tax on the allocated price of the taxable accommodation.

43 The tax shall be stated and charged separately from the sales records and shall be
44 paid by the purchaser to the operator of the business as trustee for and on account of the

1 taxing county. The tax shall be added to the sales price and shall be passed on to the
2 purchaser instead of being borne by the operator of the business.

3 The taxing county shall design, print, and furnish to all appropriate businesses and
4 persons in the county the necessary forms for filing returns and instructions to ensure
5 the full collection of the tax. An operator of a business who collects a room occupancy
6 tax may deduct from the amount remitted to the taxing county a discount equal to the
7 discount the State allows the operator for State sales and use tax."

8 **SECTION 4.(c)** G.S. 160A-215(c) reads as rewritten:

9 "(c) Collection. – Every operator of a business subject to a room occupancy tax
10 shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall
11 be collected as part of the charge for furnishing a taxable accommodation. If a taxable
12 accommodation is furnished as part of a package, the bundled transaction provisions in
13 G.S. 105-164.4D apply in determining the sales price of the taxable accommodation. If
14 those provisions do not address the type of package offered, the operator may determine
15 an allocated price for each item in the package based on a reasonable allocation of
16 revenue that is supported by the operator's business records kept in the ordinary course
17 of business and collect tax on the allocated price of the taxable accommodation.

18 The tax shall be stated and charged separately from the sales records and shall be
19 paid by the purchaser to the operator of the business as trustee for and on account of the
20 taxing city. The tax shall be added to the sales price and shall be passed on to the
21 purchaser instead of being borne by the operator of the business.

22 The taxing city shall design, print, and furnish to all appropriate businesses and
23 persons in the city the necessary forms for filing returns and instructions to ensure the
24 full collection of the tax. An operator of a business who collects a room occupancy tax
25 may deduct from the amount remitted to the taxing city a discount equal to the discount
26 the State allows the operator for State sales and use tax."

27 **MEDICAID TECHNICAL CHANGES**

28 **SECTION 5.(a)** G.S. 105-522, as enacted by Section 31.16.3(f) of S.L.
29 2007-323, reads as rewritten:

30 **"§ 105-522. City hold harmless for repealed local taxes.**

31 (a) Definitions. – The following definitions apply in this section:

32 (1) Eligible municipality. – A municipality that was incorporated on or
33 before October 1, 2008, and receives a distribution of sales and use
34 taxes under G.S. 105-472.

35 (2) Hold harmless amount. – Fifty percent (50%) of the amount of sales
36 and use tax revenue allocated under G.S. 105-486 for distribution to a
37 municipality.

38 (b) Requirement. – A county is required to hold the eligible municipalities in the
39 county harmless from the repeal of the local sales and use taxes formerly imposed under
40 this Article. The Secretary must add an eligible municipality's hold harmless amount to
41 the amount otherwise allocated to the municipality for distribution under this
42 Subchapter. To obtain the revenue for the hold harmless distribution, the Secretary must
43 reduce the amount otherwise allocated to a county for distribution under Article 39 of

1 this Subchapter or under Chapter 1096 of the 1967 Session Laws by the hold harmless
2 amounts for the municipalities in that county."

3 **SECTION 5.(b)** Section 31.16.3(d) of S.L. 2007-323 is repealed.

4 **SECTION 5.(c)** Section 31.16.3(e) of S.L. 2007-323 is repealed.

5 **SECTION 5.(d)** Subsection (a) of this section becomes effective October 1,
6 2008, and applies to distributions for months beginning on or after that date. The
7 remainder of this section is effective when it becomes law.

8 **SECTION 6.(a)** G.S. 105-523, as enacted by Section 31.16.3(f) of S.L.
9 2007-323, reads as rewritten:

10 **"§ 105-523. County hold harmless for repealed local taxes.**

11 (a) Intent. – It is the intent of the General Assembly that each county benefit by
12 at least five hundred thousand dollars (\$500,000) annually from the exchange of a
13 portion of the local sales and use taxes for the State's agreement to assume the
14 responsibility for the non-administrative costs of Medicaid.

15 (b) Definitions. – The following definitions apply in this section:

16 (1) City hold harmless amount. – The hold harmless amount determined
17 under G.S. 105-522 for the eligible municipalities in a county.

18 (2) Hold harmless threshold. – The amount of a county's Medicaid service
19 costs and Medicare Part D clawback payments assumed by the State
20 under G.S. 108A-54 for the fiscal year, less five hundred thousand
21 dollars (\$500,000).

22 (3) Repealed sales tax amount. – Fifty percent (50%) of the amount of
23 sales and use tax revenue allocated under G.S. 105-486 for
24 distribution to a county.

25 (c) Requirement. – If a county's repealed sales tax amount plus its city hold
26 harmless amount for a fiscal year exceeds the county's hold harmless threshold for that
27 fiscal year, the State is required to hold the county harmless for the difference by paying
28 the amount of the difference to the county. The Secretary must withhold from sales and
29 use tax collections under Article 5 of this Chapter the amount needed to make the
30 county hold harmless payments required by this section.

31 (d) Method. – The Secretary must estimate a county's repealed sales tax amount,
32 city hold harmless amount, and hold harmless threshold for a fiscal year to determine if
33 the county is eligible for a hold harmless payment. The Secretary must send to an
34 eligible county with the distribution made under G.S. 105-472 for March of that year an
35 amount equal to ninety percent (90%) of its estimated hold harmless payment. At the
36 end of each fiscal year, the Secretary must determine each county's hold harmless
37 payment for that year. The Secretary must send by August 15 the remainder of the
38 county's hold harmless payment for the fiscal year that ended on June 30. The Secretary
39 of the Department of Human Resources must give the Secretary of Revenue the data
40 needed to determine a county's hold harmless threshold."

41 **SECTION 6.(b)** Section 31.16.3(g) of S.L. 2007-323 is repealed.

42 **SECTION 6.(c)** Section 31.16.4(c) of S.L. 2007-323 is repealed.

43 **SECTION 6.(d)** Section 31.16.4(d) of S.L. 2007-323 is repealed.

44 **SECTION 6.(e)** Section 31.16.4(e) of S.L. 2007-323 is repealed.

1 **SECTION 6.(f)** Section 14.4 of S.L. 2007-345 is repealed.

2 **SECTION 6.(g)** G.S. 105-522(a)(2), as enacted by Section 31.16.3(f) of S.L.
3 2007-323 and amended by Section 6 of this act, reads as rewritten:

4 "(2) Hold harmless amount. – The sum of the following amounts allocated
5 for distribution to a municipality for a month:

- 6 a. The amount of sales and use tax revenue allocated under G.S.
7 105-486. This calculation determines the effect of repealing a
8 one-half percent (½%) sales and use tax distributed on a per capita
9 basis.
10 b. An amount determined by subtracting twenty-five percent (25%) of
11 the amount of sales and use tax revenue allocated under
12 G.S. 105-472 or Chapter 1096 of the 1967 Session Laws from fifty
13 percent (50%) of the amount of sales and use tax revenue allocated
14 under G.S. 105-486. This calculation determines the effect of
15 distributing a one-quarter percent (.25%) tax on the basis of point
16 of origin instead of on a per capita basis."

17 **SECTION 6.(h)** G.S. 105-523(b)(3), as enacted by Section 31.16.3(f) of
18 S.L. 2007-323 and as amended by subsection (a) of this Section, reads as rewritten:

19 "(3) Repealed sales tax amount. –The sum of the following amounts
20 allocated for distribution to a county for a month:

- 21 a. The amount of sales and use tax revenue allocated under
22 G.S. 105-486. This calculation determines the effect of repealing a
23 one-half percent (½%) sales and use tax distributed on a per capita
24 basis.
25 b. An amount determined by subtracting twenty-five percent (25%) of
26 the amount of sales and use tax revenue allocated under
27 G.S. 105-472 or Chapter 1096 of the 1967 Session Laws from fifty
28 percent (50%) of the amount of sales and use tax revenue allocated
29 under G.S. 105-486. This calculation determines the effect of
30 distributing a one-quarter percent (.25%) tax on the basis of point
31 of origin instead of on a per capita basis."

32 **SECTION 6.(i)** For fiscal year 2008-2009, the hold harmless amount
33 determined for a municipality under G.S. 105-522 and the repealed sales tax amount
34 determined for a county under G.S. 105-523 is reduced by the amount distributed in
35 October, November, and December of 2008 to the municipality or county on a per
36 capita basis under repealed G.S. 105-520(b).

37 For fiscal year 2009-2010, the hold harmless amount determined for a
38 municipality under G.S. 105-522 and the repealed sales tax amount determined for a
39 county under G.S. 105-523 is reduced by the amount distributed in October, November,
40 and December of 2009 to the municipality or county on the basis of point of origin
41 under repealed G.S. 105-520(a).

42 **SECTION 6.(j)** Subsection (a) of this section become effective October 1,
43 2008, and applies to distributions for months beginning on or after that date.
44 Subsections (g) and (h) of this section become effective October 1, 2009, and apply to

1 distributions for months beginning on or after that date. The remainder of this section is
2 effective when it becomes law.

3 **EFFECTIVE DATE**

4 **SECTION 7.** Except as otherwise provided, this act is effective when it
5 becomes law.